

SERVICE DATE – FEBRUARY 3, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35743

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
49 U.S.C. § 24308(a)—CANADIAN NATIONAL RAILWAY COMPANY

Decided: February 2, 2015

On July 30, 2013, the National Railroad Passenger Corporation (Amtrak) filed an application under 49 U.S.C. § 24308(a)(2), seeking: (1) the institution of a proceeding and a procedural schedule to determine reasonable terms and compensation for Amtrak's use of Illinois Central Railroad Company and Grand Trunk Western Railroad Company (collectively, Canadian National Railway Company (CN)) facilities (including rail lines) and services, making those new terms and compensation retroactively effective as of August 12, 2013;¹ and (2) an interim service order, effective August 12, 2013, requiring CN to continue to make available to Amtrak the facilities and services necessary for Amtrak to continue to operate on CN rail lines under the same terms and compensation as the current Amtrak-CN contract.²

In a decision served on August 9, 2013, the Board instituted a proceeding to establish reasonable terms and compensation for Amtrak's use of CN's facilities and services. Application of the Nat'l R.R. Passenger Corp. under 49 U.S.C. § 24308(a)—Canadian Nat'l Ry., slip op. at 3 (STB served Aug. 9, 2013). The Board also required CN to continue to provide facilities and services to Amtrak on an interim basis under the terms of the existing contract. Id. Subsequently, the Board adopted the procedural schedule proposed by Amtrak and CN and granted the parties' joint motion for a protective order. To facilitate the parties' discovery process, the Board also granted several extensions of the procedural schedule. In addition, the Board issued decisions addressing discovery disputes on April 15, 2014, and September 23, 2014. In the September 23 decision, the Board modified the procedural schedule by ordering Amtrak to file a notice with the Board when production to CN is complete and stating that opening submissions will be due 30 days from the date of that filing. Application of the Nat'l R.R. Passenger Corp. under 49 U.S.C. § 24308(a)—Canadian Nat'l Ry., slip op. at 11-12 (STB served Sept. 23, 2014).

¹ The agreement between Amtrak and CN that governed terms and compensation expired on August 11, 2013, and Amtrak therefore requested that the Board's orders be retroactively effective as of August 12, 2013. See Application at 1-2.

² CN responded to Amtrak's application by letter on August 1, 2013, and by formal reply on August 19, 2013.

On December 2, 2014, CN filed its third motion to compel responses to discovery requests. Amtrak replied on December 10, 2014, that it was “willing to produce substantially all of the additional information CN has requested as narrowed by the language of the Third Motion to Compel.”³ Amtrak stated that it was prepared to provide the discovery responses no later than December 23, 2014.⁴ There is nothing in the record indicating whether Amtrak has produced any such additional information and, if so, the extent to which any such production affects CN’s third motion to compel.

It would be premature for the Board to decide CN’s third motion to compel without further information on the progress of discovery. Therefore, by February 10, 2015, CN and Amtrak each shall inform the Board of the extent to which discovery regarding the issues raised in CN’s third motion to compel has progressed since Amtrak’s December 10 reply, and CN shall indicate how, in light of any such progress, CN requests that the Board proceed with the pending motion (e.g., await an amended motion, hold it in abeyance while the parties continue to attempt to resolve any disputes, proceed to decide it, or dismiss it).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CN and Amtrak are directed to file updates as described above by February 10, 2015.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

³ Amtrak Reply 7.

⁴ Id. at 8.